

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEROME LENORDA POWELL, II,
Plaintiff,
v.
CITY OF BELLINGHAM, *et al.*,
Defendants.

Cause No. C22-0874RSL

ORDER ADOPTING IN PART THE REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable David W. Christel, United States Magistrate Judge (Dkt. # 13) and plaintiff's "Motion for Leave to Amend" (Dkt. # 14). Having reviewed the record in the above-captioned matter, the Court adopts the Report and Recommendation in all respects except that plaintiff will be given leave to amend his allegations regarding the excessive force claim against Officers Starkovich and Lyons. All other claims are hereby DISMISSED.

In order to state an excessive force claim upon which relief may be granted, the claim cannot rest on an assumption that plaintiff was innocent in light of *Heck v. Humphrey*, 512 U.S. 477 (1995), and plaintiff must allege facts giving rise to the plausible inference that the amount of force Officers Starkovich and Lyons used was excessive given the circumstances.

Plaintiff shall file a second amended complaint using the form provided. The second amended complaint must be legibly rewritten or retyped in its entirety, it should contain the

1 same case number, and it may not incorporate any part of the first or second complaints by
2 reference. The second amended complaint will act as a complete substitute for the previous
3 complaints, and not as a supplement. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th
4 Cir. 1997), overruled in part on other grounds by *Lacey v. Maricopa County*, 693 F.3d 896 (9th
5 Cir. 2012). The Court will screen the second amended complaint to determine whether it
6 contains factual allegations sufficient to raise a plausible inference that Officers Starkovich
7 and/or Lyons used excessive force when arresting plaintiff in April 2020. Attachments will not
8 be considered as a substitute for allegations in the second amended complaint itself: plaintiff is
9 therefore directed to include all allegations and relevant facts in the body of the second amended
10 complaint.

14 If plaintiff fails to file a second amended complaint or fails to adequately address the
15 issues raised herein on or before October 24, 2022, the above-captioned matter will be
16 dismissed.
17

18 The Clerk of Court is to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
19 civil rights complaint and for service and to send copies of this Order and Pro Se Instruction
20 Sheet to plaintiff. The Clerk is further directed to note this matter for consideration on Friday,
21 October 28, 2022.

23 Dated this 27th day of September, 2022.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge